

AG Contract No. KR95 2679TRN  
ADOT ECS File: JPA 95-210  
Project: G1050 50C  
Section: 75th Ave. ESP Improvements

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF PHOENIX

73983

THIS AGREEMENT is entered into 20 MARCH 96, 1996,  
pursuant to Arizona Revised Statutes, Sections 11-951 through 11-  
954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State") and the  
CITY OF PHOENIX, acting by and through its MAYOR and CITY COUNCIL  
(the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. The City is empowered by Arizona Revised Statutes  
Section 41-1513 and 28-1895 et seq to enter into this agreement  
and has by resolution, a copy of which is attached hereto and  
made a part hereof, resolved to enter into this agreement and has  
authorized the undersigned to execute this agreement on behalf of  
the City.

3. The City has requested Economic Strength Project (ESP)  
funds in the amount of \$119,975.00; the Arizona Department of  
Commerce and the Economic Development Commission have recommended  
the approval of such funds for the City, and the Transportation  
Board has approved the funding, for the construction of street  
improvements to 75th Avenue South of Durango to provide improved  
access to a new terminal, and aid in the retention and  
development of local business, hereinafter referred to as the  
Project.

THEREFORE, in consideration of the mutual agreements expressed  
herein, it is agreed as follows:

NO. <u>20589</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>03/20/96</u>
<u>James Lee Glavin</u> Secretary of State
By <u>Vicky Hoenewald</u>

## II. SCOPE

### 1. The City will:

a. Insure the additional commitment of 44% of the total estimated Project cost, or \$94,276.00; whichever is more, from the City or other sources (not including ESP funds) to the Project and related improvements. Upon completion, accept the Project on behalf of the City and provide maintenance.

b. Invoice the State for ESP funds (Arizona Department of Commerce, ATTN: Deputy Director, 3800 N. Central Avenue, Suite 1500, Phoenix, AZ 85012), in the amount of \$119,975.00.

c. Provide the State a copy of the executed Project contract(s), and draw down and expend the State ESP funds no later than six (6) months after the effective date of this agreement. Provide the State written reports of all ESP fund expenditures, supported by invoices, receipts or other suitable documentation, and a final accounting report no later than thirty (30) days after ESP funds are fully expended. Reimburse the State any funds received under this agreement which are expended and subsequently disallowed by the State.

d. Provide the State (Arizona Department of Commerce, ATTN: Strategic Finance Division Director, 3800 N. Central Avenue, Suite 1500, Phoenix, AZ 85012) with quarterly Project status reports, and one year after completion of the Project, a written Economic Impact Report outlining the impact of the Project, to include jobs created, jobs retained and related data.

### 2. The State will:

a. Within thirty (30) days after receipt and approval of the ESP contract(s) and invoice, advance the City ESP funds in the amount of \$119,975.00.

## III. MISCELLANEOUS PROVISIONS

1. The only interest of the Department of Transportation in the Project is to convey economic strength pass through funds for the use and benefit of the City by reason of state law under which funds for the Project are authorized to be expended.

2. The City agrees to indemnify and save harmless the State, or any of its departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or non-performance by the City of any of the provisions of this agreement.

3. The total amount of ESP funds expended under this agreement shall not exceed 56% of the total Project cost. Should the Project not be completed, be partially completed, or be completed at a lower cost than the advanced amount, or for any other reason should any of these ESP funds not be expended, a proportionate amount of the funds provided under this agreement shall be reimbursed to the State.

4. This agreement shall remain in force and effect until completion of said Project, reimbursement and subsequent reports; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

5. This agreement shall become effective upon filing with the Secretary of State.

6. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

7. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

8. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Room 222E Mail Drop 616E  
Phoenix, AZ 85007

City of Phoenix  
Community and Economic  
Development Director  
200 West Washington Street - 20th floor  
Phoenix, AZ 85003-1611

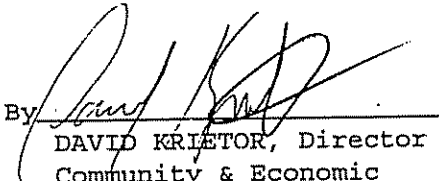
10. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

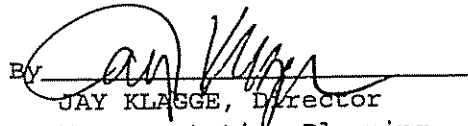
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF PHOENIX

STATE OF ARIZONA

Department of Transportation

By   
DAVID KRIETOR, Director  
Community & Economic  
Development

By   
JAY KLAGGE, Director  
Transportation Planning

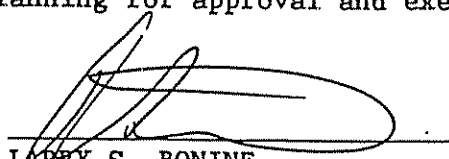
ATTEST:

By   
VICKY MIEL  
City Clerk

RESOLUTION

BE IT RESOLVED on this 29th day of November 1995, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Phoenix for the purpose of defining responsibilities to convey Economic Strength grant funds to the City.

Therefore, authorization is hereby granted to draft said agreements which, upon completion, shall be submitted to the Director, Transportation Planning for approval and execution.



for LARRY S. BONINE  
Director

Law

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ORDINANCE NO. S 2 3 3 5 9

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF ARIZONA DEPARTMENT OF COMMERCE ECONOMIC STRENGTH PROJECT GRANT FUNDS TO FOR THE CONSTRUCTION OF STREET IMPROVEMENTS AT 75TH AVENUE AND LOWER BUCKEYE ROAD; AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION; AUTHORIZING A DEVELOPMENT AGREEMENT WITH SWIFT TRANSPORTATION COMPANY, INC.; AUTHORIZING THE CITY CONTROLLER TO DISBURSE FUNDS; AND DECLARING AN EMERGENCY.

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BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1: That the City Manager or his designee be, and they are hereby, authorized to accept Arizona Department of Commerce Economic Strength Project ("ESP") grant funds in the amount of \$119,975 to be used solely for the construction of street improvements ("Project") in the public right-of-way in the vicinity of 75th Avenue and Lower Buckeye Road in Phoenix.

SECTION 2: That the City Manager or his designee be, and they are hereby, authorized to enter into an Intergovernmental Agreement ("IGA") with the Arizona Department of Transportation ("ADOT"), which shall include the following provisions:

- (a) At least 44% of the estimated Project costs or \$94,975, whichever is greater, shall be obtained from a source other than ESP funds;
- (b) The City shall provide ADOT with a copy of the executed Project contract(s), along with an invoice in the amount of \$119,975;
- (c) Within 30 days after receipt and approval of the contract(s) and invoice, ADOT shall pay the ESP funds to the City;
- (d) The City shall forward to ADOT copies of all documentation evidencing the expenditure of ESP funds, along with any written reports requested by ADOT; and
- (e) Such other terms and conditions as may be deemed necessary or appropriate.

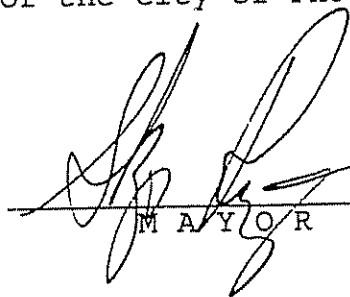
SECTION 3: That the City Manager or his designee be, and he is hereby, authorized to enter into a Development Agreement with Swift Transportation Company, Inc. ("Swift"), which shall include the following provisions:

- (a) Before the City awards a contract for the construction of the Project, Swift shall pay \$64,276 to the City to be used, along with the ESP funds, to finance the Project;
- (b) The City shall construct the Project as a public works project in accordance with all applicable state statutes and City plans, specifications and ordinances;
- (c) The balance of the Project costs shall be paid by the City.
- (d) Such other terms and conditions as deemed necessary and appropriate.


SECTION 4: That the City Controller or his designee be, and they are hereby, authorized to disburse funds in accordance with the provisions of this Ordinance.

SECTION 5: WHEREAS, the immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety, an EMERGENCY is hereby declared to exist, and this Resolution shall be in full force and effect from and after its passage by the Council as required by the City Charter and is hereby exempted from the referendum clause of said Charter.

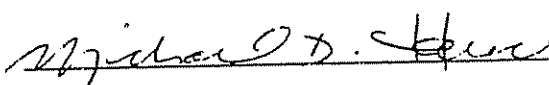
PASSED by the Council of the City of Phoenix this 7 day of February, 1996.

  
MAYOR

ATTEST:

  
City Clerk


APPROVED AS TO FORM:

 ACTING  
City Attorney

REVIEWED BY:

  
City Manager

RECEIVED - 7 FEB 1996  
9:29  
CITY CLERK

 JEP:ycm:2807:02/07/96



APPROVAL OF THE CITY ATTORNEY

I have reviewed the above referenced proposed  
intergovernmental agreement, between the DEPARTMENT OF  
TRANSPORTATION, HIGHWAYS DIVISION, and the CITY OF PHOENIX and  
declare this agreement to be in proper form and within the powers  
and authority granted to the City under the laws of the State of  
Arizona.

DATED this 13th day of February, 1996.

Michael D. Hesse  
ACTING  
City Attorney *SH*



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025

TELECOPIER : 542-4085

GRANT WOODS  
ATTORNEY GENERAL

INTERGOVERNMENTAL AGREEMENT  
DETERMINATION

A. G. Contract No. KR95-2679-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 11th day of March, 1996.

GRANT WOODS  
Attorney General

A handwritten signature in dark ink, appearing to read "James R. Redpath", is written over a horizontal line.

JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:lsr  
9042G